

SCOTT KEITH WILSON, Federal Public Defender (#7347)
KRISTEN R. ANGELOS, Assistant Federal Public Defender (#8314)
OFFICE OF THE FEDERAL PUBLIC DEFENDER
DISTRICT OF UTAH
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Email: kris_angelos@fd.org

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KONSTANIN MIKHAYLOVICH
TOMILIN,

Defendant.

**DEFENDANT’S MOTION TO
COMPEL DISCOVERY**

Case 2:19-cr-00394 RJS-DBP-3

Konstanin Mikhaylovich Tomilin (“Mr. Tomilin”), through counsel, moves this Court to compel the government to produce full discovery to the defense pursuant to DUCrimR 16 of the Federal Rules of Criminal Procedure. *See also, Brady v. Maryland*, 373 U.S. 83, 87 (1963)(“[T]he suppression by the prosecution of evidence favorable to an accused....violate[s] due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”). This motion is based on the following facts:

1. On October 24, 2019, Mr. Tomilin was charged with wire fraud, in violation of 18 U.S.C. § 1343 and §1349, money laundering, in violation of 18 U.S.C. §956(a)(1)(A)(i) and 2, and money laundering, in violation of 18 U.S.C. §1957, in a multi-count Indictment.

2. Five years later, on February 5, 2024, Mr. Tomilin was found guilty at trial of Wire Fraud and Honest Services Conspiracy, in violation of 18 U.S.C. §1343 and §1349.
3. On May 5, 2024, Stephen R. McCaughey filed a motion to withdraw as counsel for Mr. Tomilin.
4. On May 13, 2024, Magistrate Judge Cecilia Romero, granted Mr. McCaughey's motion to withdraw as counsel and appointed undersigned counsel that same day. Undersigned Counsel was on leave and not at this hearing, but Assistant Federal Public Defender Wojciech Nitecki appeared. Mr. Nitecki was informed that undersigned counsel was to be appointed to represent Mr. Tomilin at an upcoming forfeiture hearing, set for August 7, 2024, and a sentencing hearing, set for September 26, 2024.
5. There have been multiple Bill of Particulars filed in this matter regarding forfeiture, indicating that the government is seeking to forfeit a significant number of items, including multiple properties, jewelry, and seized money. *See e.g.* [Doc. 517](#). Additionally, there have been at least thirty-one discovery productions and Certificate of Compliance filings. *See e.g.* [Doc. 649](#). Further, the Government has noticed up an expert for the upcoming forfeiture proceedings. *See e.g.* [Doc. 486](#). As such, defense counsel needs to have the entirety of the discovery to review pertinent evidence associated with the forfeiture proceedings, to provide to any expert witness defense counsel intends to hire, to prepare for sentencing, and to effectively represent Mr. Tomilin in this matter.
6. On July 5, 2024, defense counsel's paralegal sent an email to opposing counsel requesting discovery be uploaded to the United States' box account, USAfx, for download and accessibility. On July 6, 2024, opposing counsel asked that defense

counsel obtain discovery from prior counsel, Mr. McCaughey.

7. Defense counsel's paralegal attempted to obtain the discovery from Mr. McCaughey, only to be provided a physical box of discovery, a hard drive and disk of partial discovery productions. Mr. McCaughey's office could not provide a full electronic copy of discovery. Defense counsel has no idea if the "box" of discovery is the entirety of the discovery originally provided to Mr. McCaughey.

With this in mind, Mr. Tomilin asks this Court to order opposing counsel to produce all discovery, in electronic form, with an index to allow the discovery to be searched. This discovery is essential for adequate forfeiture proceedings preparation and sentencing. Without this discovery, defense counsel will be ineffective and will not be able to adequately represent Mr. Tomilin at the forfeiture and sentencing proceedings.

DATED this 18th day of June, 2024.

/s/ Kristen R. Angelos
KRISTEN R. ANGELOS
Assistant Federal Public Defender